

National Conference of Commissioners on Uniform State Laws (NCCUSL) Rewrite of Uniform Division of Income for Tax Purposes Act (UDITPA)

The National Conference of Commissioners on Uniform State Laws was formed in 1892. It is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. NCCUSL's purpose is to study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. It must be emphasized that the Conference can only propose—no uniform law is effective until a state legislature adopts it. The Uniform Division of Income for Tax Purposes Act (UDITPA) was drafted by the NCCUSL and was approved by the NCCUSL in 1957. The idea behind the UDITPA was to foster uniformity in state taxation of multistate businesses. California adopted the UDITPA in 1966.

The Multistate Tax Compact was drafted in 1966 and became effective, according to its own terms, on August 4, 1967, after seven States had adopted it. By 1972, 21 States had become members. The Multistate Tax Compact's purpose is to foster uniformity between the various states by the adoption, as part of the compact, of the model UDITPA methodology. The language of the UDITPA is therefore contained within the compact itself, in Article IV. In addition, the Multistate Tax Compact establishes the Multistate Tax Commission (MTC). Among other things, Article VI of the Compact provides that the MTC has the power to develop and recommend proposals for an increase in uniformity or compatibility of State and local tax laws. To this end, the MTC developed uniform regulations for the UDITPA. California adopted the Compact in 1974.

The MTC has now asked the NCCUSL to undertake a review of the UDITPA. It has been fifty years since its original approval and much has changed in the economy and the way businesses operate. The primary concern raised by the MTC involved the assignment of receipts from services and intangibles for sales factor purposes. These rules are contained in section 17 of the UDITPA (R&TC section 25136) and provide that receipts are assigned to the state where the income producing activity occurred. If this activity occurs in more than one state, then the receipts are assigned to the state where the greatest cost of performance was incurred in performing the income producing activity. These rules have proven to be almost unworkable in the modern business context and quite frequently have led states to adopt alternative apportionment rules to better reflect the market for various industries.

A meeting was held on May 4, 2007, where the NCCUSL Study Committee took input from various parties, including the MTC, the Council On State Taxation (COST), the Federation of Tax Administrators (FTA) and the Tax Executives Institute (TEI). Franchise Tax Board staff also participated. The meeting discussed the current state of the UDITPA and whether it was time to appoint a draft committee to undertake a review

of the Act. Also discussed was the scope of such a project if it were to go forward. After the meeting, the NCCUSL Study Committee issued a memorandum setting forth its decision that it would recommend to the Committee on Scope and Program that a drafting committee be formed to revise the UDITPA in its entirety. Given this recommendation it is expected that the NCCUSL will move to form a drafting committee and that the MTC, as well as staff of the Franchise Tax Board, will be participating in this process.